



Physician Guide to Hospital Employment Agreements

How to Use This Document

This Physician Guide to Hospital Employment Agreements (“Guide”) discusses several provisions that are commonly included in employment agreements drafted by hospitals. This Guide focuses on the legal and practical issues that are presented in the agreements. Sample contract language is included to demonstrate how some of the provisions may appear in the agreements.

This Guide is for general informational purposes only. It does not include or discuss each and every potential contract provision. This Guide does not provide, and is not intended to provide, legal advice or legal opinions on any specific facts or circumstances, nor is it intended to substitute for legal advice. Physicians are urged to seek legal advice from their own lawyers specific to the agreements at issue.

1. The Parties

The agreement will begin with a statement identifying all parties to the agreement. In most cases, the parties to the agreement will be the physician and the hospital corporate entity. It is important that the correct parties be named, using the proper legal names.

Example:

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between **ACME HOSPITAL, INC.**, a non-profit corporation (“Hospital”), and **SAM JONES, DPM**, a physician duly licensed to practice medicine (“Physician”).

2. Recitals

Some agreements include recitals, which are statements explaining who the parties are and why they are entering into the agreement. This section should be reviewed to confirm that the recitals are accurate.

Example:

WITNESSETH:

WHEREAS, Hospital is a non-profit corporation which provides health care services to residents of the Happy Valley area;

WHEREAS, Hospital has identified the need to provide physician services through and as a part of a community-based network of family practice and specialty physicians;

WHEREAS, Physician has the requisite training and expertise in such specialty needed by Hospital; and

WHEREAS, Physician is willing to accept employment by Hospital and provide administrative and professional services pursuant to the terms of this Agreement.

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3. A Description of the Physician's Duties and Responsibilities

This section of the agreement will describe the physician's duties and responsibilities to the hospital. Generally, this section should describe the physician's duties and responsibilities with enough specificity so that the physician has a clear understanding of what is required under the agreement. For example, a sentence that states that the physician should "perform the typical duties associated with a physician" does not provide the physician with a clear description of the employer's expectations. In many contracts, this section may not list the physician's specific duties and responsibilities but will instead refer to an exhibit (an attachment to the contract) which contains the list of duties and responsibilities. If the exhibit is incorporated into the contract, it is part of the contract.

Note that regardless of where the physician's duties are described in the agreement, if the list of duties includes a general description such as "and any other duties and responsibilities required by Hospital," the hospital has the discretion under the agreement to add or modify the physician's duties and responsibilities without the approval of the physician.

The following are potential issues to consider when reviewing this section of the agreement:

- Does the section specify where the physician will provide services? This may be important if the hospital has multiple practice locations and the physician does not want to be required to provide services at all locations.
- Does the section specify the number of hours that the physician must work? This may be important if the physician expects part-time employment.
- Does the section specify the physician's on-call duties?
- Does the section specify whether the physician will have any administrative duties in addition to patient care duties, and if so, does it specify the number of hours required to be devoted to administrative duties?
- Does the section require the physician to provide a standard of care that is higher than required by state law? For example, if the agreement states that the physician is expected to provide care of "the highest quality possible" the physician is likely agreeing to accept a standard that is not required and that is higher than what state law generally requires. On the other hand, if the agreement states that the physician shall provide care in compliance with generally accepted standards in the community, such an agreement does not impose a higher standard than required by law.
- Does this section prohibit the physician from engaging in any other outside activities, or is it silent on this issue? For example, if a physician wants to have the ability to lecture or serve as a consultant or expert witness, the physician should request language in the agreement to allow such activities and the agreement should also specify whether the physician is allowed to retain the compensation for such activities.

In addition to describing the specific duties of the physician, this section of the contract may also include related obligations imposed upon the physician such as maintaining Board-certification, participation in the hospital's third-party payor programs, and maintaining hospital privileges and/or an unrestricted state medical license.

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Note: The agreement may require the physician to make “representations and warranties” of certain facts, for example that the physician possesses a full and unrestricted state medical license and federal DEA registration. A representation and warranty is generally considered a fact which induces someone to enter into a contract. Therefore, the hospital will likely consider it to be a breach of the agreement (which will allow the hospital to terminate the agreement) if the fact represented was not true at the time it was made, and/or depending on the language, if the fact is not true sometime in the future.

This section may also require the physician to “comply with all hospital policies.” Such language would contractually bind the physician to unspecified policies even if the policies have not been provided to the physician. In order to avoid such an issue, the physician can request that the hospital specifically name the policies in the agreement and provide the physician with copies of all such policies. From the hospital’s perspective, it is highly regulated by federal, state, and private accreditation agencies; therefore, the hospital has legitimate reasons to require the physician to comply with its policies. However, it is also reasonable for the hospital to identify and provide all relevant policies to the physician, so the physician knows the terms to which he is agreeing prior to signing the agreement.

Example:

Employment Duties and Responsibilities

3. Employment. Physician shall provide the services described herein on a full-time basis in accordance with the terms of this Agreement. Physician’s work hours shall be determined in the reasonable discretion by Hospital but shall not be less than forty (40) clinical hours per week, of which Physician shall be available to provide professional services at Hospital or any site designated by Hospital. Physician shall: provide medical services to patients at Hospital, or any other site designated by Hospital on such days and during such hours as Hospital and Physician may reasonably agree; promptly complete medical records and cooperate in completion of necessary forms for third-party reimbursement; participate in patient satisfaction surveys as requested by Hospital; assist in the development of Hospital policies and procedures; manage and develop Patient education programs; and participate in the performance of such administrative matters and meetings, quality assurance programs, utilization review programs and educational programs as required by the medical staff bylaws and rules and as Hospital shall reasonably require.

3.1 Charity Care. Physician acknowledges that Hospital is committed to providing health care to the sick and poor. As such, Physician may be called upon to provide charitable care to the poor at no charge consistent with Hospital’s current practices, missions and philosophy. Physician shall provide such charitable care as reasonably requested by Hospital.

3.2 Licensure. Physician shall hold and continue to hold an unlimited license to practice medicine in all states in which Hospital operates, an unrestricted state and federal registration to dispense drugs and write prescriptions, shall be enrolled as a provider in Medicare, Medicaid, any other federally funded health care program, as well as any managed care plan that has a signed provider agreement with

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Hospital; and shall comply with those regulations and standards of professional conduct adopted by the applicable state Medical Board.

3.3 Medical Staff Privileges. Physician shall be and remain a member of the active staff of Hospital's medical staff with clinical privileges sufficient to permit Physician to perform all services required throughout the Term of this Agreement. Physician shall participate in regular medical staff activities and responsibilities.

3.4 Professional Ethics. Physician shall comply with generally accepted medical ethics and principles and shall acknowledge and respect the freedom of Patients to participate in decision making concerning health care as well as Patient choice in choosing health care providers.

3.5 Compliance with Hospital Policies. Physician shall abide by the Policies of Hospital as well as Hospital's corporate compliance program, which such may be established, adopted or revised by Hospital from time to time.

3.6 Participation of Third-Party Payors. Physician:

3.6-1 will participate in all managed care and third-party payor programs designated by Hospital, including but not limited to, the Medicare and Medicaid programs;

3.6-2 will abide by all applicable requirements and guidelines of the payment and health delivery plans in which Hospital participates; and

3.6-3 will not contract or participate with any third-party payor or managed care plan without the prior written consent of Hospital.

4. A Description of the Hospital's Duties

The hospital's duties are explained in this section of the agreement. Sometimes the agreement does not include any specific duties on the part of the hospital. However, it is appropriate for the agreement to include at least the basic duties of the hospital.

Example:

Obligations of Hospital

4.1 Space and Facilities. Hospital shall provide Physician use of space, equipment, personnel, and other resources as Hospital deems appropriate for the delivery of services Physician is to provide under this Agreement.

4.2 Management and Support Staff of Hospital; Employee Discipline and Termination. Hospital shall, at its expense, by itself or through a third party, provide and maintain the operations of Hospital's

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physician services, including practice management, equipment and supplies. Hospital shall provide staff that are reasonably necessary for Physician to provide Services hereunder. The final determinations regarding hiring and termination of personnel shall remain with Hospital.

5. Compensation

Compensation can be addressed in various ways in the agreement. It is not unusual for hospital agreements to include a base or guaranteed annual salary in addition to an incentive bonus. It is important that the contract specify the amount and type of compensation and that the physician understand the compensation structure. Some agreements include basic compensation structures while others use very detailed formulas with multiple components. The following are relevant questions when reviewing this section of an agreement:

- Is the compensation structure clearly spelled out in the agreement?
- Does the agreement address whether and how the base salary will be increased? If not, this likely means that any employment agreement would have to be renegotiated to modify the base compensation.
- Does the agreement address what happens with respect to compensation if employment is terminated early by either party? For example, is the physician entitled to compensation based on receivables obtained after termination, or does all compensation end when employment ends for any reason?

In addition to base and incentive compensation, the agreement should address whether the hospital intends to provide fringe benefits such as health and disability insurance, vacation, and continuing medical education expenses.

The agreement should also specify whether the hospital will pay for professional liability or malpractice insurance. The physician should be knowledgeable about the state's malpractice liability coverage requirements and options. For example, if state law requires that a physician have a minimum amount of coverage, the agreement should specifically require such coverage. In addition, state law may (1) require the physician or her insurer to pay a surcharge or participate in a compensation fund; or (2) provide the physician with benefits for paying the surcharge (for example, placing a limit on the amount of malpractice damages that can be awarded). If so, the agreement should require payment of the surcharge.

The agreement should also specify whether the professional liability coverage will be on a claims made basis, which means that the insurance policy will only cover claims made during the time that the policy was in effect. As a result, if a claim is made against the physician after the physician is no longer employed by the hospital, the hospital's policy would not cover the claim even if it relates to a patient treated during the physician's employment with the group. Therefore, either the group or the physician would need to purchase "tail coverage" to cover those claims which involve the physician's acts while he was employed by the hospital, but which were made after termination of employment. The agreement should specify which party will be responsible for obtaining and purchasing the tail coverage.

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Example:

Compensation

5.1 Compensation.

In consideration of the Services to be provided by Physician hereunder, Hospital shall compensate Physician with an annual base salary of **[DOLLAR AMOUNT]** 00/100 Dollars (\$_____) (“Base Salary”), less applicable taxes, subject to the provisions herein. Hospital shall pay the Base Salary in equal installments as such regular intervals as similarly situated employed physicians are paid.

5.2 Employee Benefits. Physician shall be eligible to participate in such employee benefit plans of Hospital as such benefits are provided from time to time to similarly situated employees of Hospital with similar durations of employment; however, participation in such benefit plans shall be pursuant to and subject to the conditions and terms of such plans, as amended from time to time at the sole discretion of Hospital. Hospital retains the right to modify the benefits offered to employees and such modifications shall apply to Physician and shall not be considered a breach of this Agreement.

5.3 Time Off. Physician shall be entitled to fourteen (14) days paid time off (“PTO”) for vacation, sick, holidays and five (5) days paid time off for Continuing Medical Education (CME) during the Term of this Agreement. Physician shall schedule such time off in advance and shall be responsible for securing alternate coverage during such absences. Physician is not eligible to participate in any buy back/cash in PTO policies.

5.4 Continuing Medical Education. Physician shall be provided an allowance (includes fee for seminars and all travel cost) of up to **[DOLLAR AMOUNT]** during the Term of this Agreement subject to authorization by Hospital to include fee for seminars and all travel cost. If Physician does not meet Hospital CME requirements at recertification time then Physician must reimburse Hospital for the amount of all CME expenditures that Hospital has made to Physician or on Physician’s behalf. In the event Physician does not reimburse Hospital within thirty (30) days after Hospital learns that Physician does not meet Hospital CME requirements, then Physician shall not be entitled to receive any further CME allowance from Hospital.

5.5 Professional Dues, Fees and License. Hospital shall pay for license and registration fees, and similar charges incurred by Physician, including, but not limited to, Physician’s professional membership dues, state license fees, DEA controlled substance license fees, up to a maximum of **[DOLLAR AMOUNT]** a year.

5.6 Professional Liability. Hospital shall provide professional liability coverage for Physician during the Term of this Agreement and for claims made involving Physician after the Term of this Agreement, but covering services rendered during the Term hereof (“tail coverage”) by Physician to the same extent as any other physician employee of Hospital acting within the scope and course of employment. Physician shall provide proof of Physician’s own tail insurance on an annual basis to Hospital covering all of

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Physician's administrative and professional actions that occurred prior to the Effective Date of this Agreement.

5.7 Physician shall be covered by Hospital's professional liability coverage only while Physician is acting within the scope and in the course of Physician's employment with Hospital.

6. Billing and Assignment

This section of the contract will state that the hospital will bill for all services provided by the physician and that all amounts collected will be the property of the hospital. The hospital will likely require the physician to sign a separate statement indicating that the physician will reassign all Medicare and Medicaid payments to the hospital. Some agreements may include an indemnification provision which requires the physician to indemnify or reimburse the hospital for all costs the hospital incurs (including attorneys' fees, sanctions and money judgments) caused by the physician's errors or intentional acts related to billing. Such a provision could potentially expose the physician to significant liability. If the hospital insists on such a provision, the physician could require that the indemnification be mutual, which means that if the hospital incurs costs related to a billing issue which is caused solely by the physician, the physician agrees to reimburse the hospital for the costs, and if the physician incurs costs related to a billing issue caused by the hospital, the hospital agrees to reimburse the physician for the costs.

Example:

6.1 Billing. Hospital shall be responsible for the billing of Patients, Medicare, Medicaid and/or third party payors for all Services of Physician provided hereunder. Physician agrees not to independently bill any Patient for Physician Services. All such billings will be under Hospital's taxpayer identification number. All collections received on account of Services rendered by Physician shall be the property of Hospital. Physician shall take all actions reasonably requested by Hospital to assist Hospital in the collection of payments for services of Physician, including, but not limited to, the submission of provider applications to third party payors.

6.2 Indemnification. Hospital will indemnify Physician for any costs, fines, penalties, and expenses actually incurred by Physician in connection with any governmental investigation regarding any improper billing by Hospital or any third party acting on Hospital's behalf, other than those arising from acts or omissions of Physician.

7. Term and Termination

This section of the agreement establishes the length of time that the agreement is in effect (the term), whether the agreement will automatically renew at the end of the initial term, and the specific reasons which would allow one or both parties to terminate the agreement prior to the term of the agreement. Usually agreements will allow one or both parties to terminate the agreement "with cause," which means upon the occurrence of a

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specified condition (like breach of contract), and “without cause,” which means for any reason. For this section, the physician should consider his or her specific circumstances and whether it is more advantageous to the physician to have a longer term and whether it is more advantageous for the physician to have the ability to terminate without cause with a shorter or longer time period for the required notice. For example, if the agreement allows either party to terminate without cause with 30 days written notice, such a provision would allow a physician to terminate his or her employment with fairly short notice. On the other hand, it would also allow the hospital to terminate upon the same short notice, which may not provide the physician with much time to arrange for other employment.

With respect to termination for cause, it is important to understand whether the agreement gives the physician the opportunity to “cure” or fix the physician’s breach of contract before termination, or whether the hospital can terminate simply upon the physician’s breach of the contract. There will be some situations that the physician cannot cure and the hospital will likely want the ability to terminate without having to provide the physician with an opportunity to cure. A common example is conviction of a felony. However, where possible and applicable, the physician can request that termination for cause will only occur after the hospital (1) gives written notice to the physician of the breach of the agreement; and (2) the physician fails to cure the breach within 30 days of receiving such written notice.

Finally, it is important to ensure that there is a provision which allows the physician to terminate the agreement if the hospital breaches the agreement. Some agreements are initially drafted one-sided, so that only the hospital has the ability to terminate the agreement.

Example:

Term and Termination

7.1 Term. This Agreement shall be effective on the ____ day of _____, 20__ (the “Effective Date”) and shall have a Term of three (3) years (the “Term”). The Agreement shall automatically renew for additional one-year terms unless terminated as provided herein.

7.2 Termination. Notwithstanding Section 7.1, this Agreement shall terminate prior to its natural termination on the occurrence of any of the following events:

7.2-1 Termination by Agreement. In the event Hospital and Physician agree in writing.

7.2-2 Termination Without Cause. This Agreement may be terminated by either party without cause by providing the other party at least ninety (90) days’ prior written notice of such termination.

7.2-3 Termination for Breach of Agreement. Either party may terminate this Agreement in the event of a material breach of the terms of this Agreement by the other party provided the other party fails to cure such breach within thirty (30) days following written notice of such breach.

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7.2-4 Termination by Virtue of Death or Disability. This Agreement shall terminate immediately upon the death of Physician. Physician or Hospital may terminate this Agreement if Physician has a disability preventing Physician from providing Services required pursuant to this Agreement for one hundred eighty (180) days and Hospital has no reason to believe that Physician will be able to return to work with or without reasonable accommodations.

7.2-5 Immediate Termination by Hospital. Notwithstanding any language contained herein to the contrary, this Agreement may be terminated by Hospital immediately upon the following events:

- i. Physician fails to obtain and maintain a permanent license to practice medicine in the state(s) where Hospital is located, or Physician's license to practice medicine is suspended, revoked or limited;
- ii. Physician's clinical privileges or medical staff membership is terminated, restricted, suspended or limited in accordance with the policies of the hospital;
- iii. Physician is excluded from participating in any federal health care program for any reason; or in any managed care organization for reasons related to the quality of patient care or patient satisfaction;
- iv. Physician fails to maintain an unrestricted state and federal registration to dispense and to write prescriptions for prescription drugs and/or controlled substances;
- v. Physician is convicted of a felony;
- vi. Physician violates Hospital's lawful drug testing, treatment or intervention policies;
- vii. Physician fails, after thirty (30) days written notice, to provide the Services required by this Agreement or meet the productivity expectations set forth in Exhibit X, other than as a result of disability;
- viii. Physician commits a crime (other than a minor traffic violation) or engages in immoral conduct tending to injure the reputation of Hospital;
- ix. Physician's conduct, as determined in the sole discretion of Hospital, is disruptive to the delivery of medical care in the Hospital; or
- x. Physician is impaired while on duty or on call due to the use of alcohol, prescription or non-prescription medications, or illegal drugs, where such use results in Physician being unable to perform the essential functions of his position or results in Physician posing a safety threat to

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others as determined in the sole discretion of Hospital. Physician agrees to submit to any medical examination or substance abuse testing as may be reasonably requested by Hospital.

8. Restrictive Covenant and Non-Solicitation

It is not uncommon for any physician employer, including hospitals, to include a restrictive covenant or non-compete clause in the agreement. Generally, a restrictive covenant prevents the employed physician from competing against the hospital by practicing in a specific geographic area during and after the term of employment and for a specific time period after termination of employment. Most provisions also allow the employer to go to court and seek injunctive relief, which means that a court can order the physician to comply with the restrictive covenant and refrain from practicing as agreed in the contract. The agreement may also require the physician to pay the hospital's attorneys' fees and expenses if the hospital is required to seek the court order to enforce the restrictive covenant.

Each state has its own laws on whether restrictive covenants are permitted, and if so, what terms can be imposed in such restrictive covenants. If a state allows a restrictive covenant, the physician will want to make the scope of the geographic area as small as possible, and the restricted time period as short as possible. Another important consideration is whether the physician should be bound by the restrictive covenant if the hospital terminates the agreement without cause. The physician may want to negotiate the provision so that the restrictive covenant only applies if the physician terminates the agreement without cause or if the hospital terminates the agreement for cause, but the restrictive covenant does not apply if the physician terminates the agreement for cause (for example, the hospital breaches the agreement) or if the hospital terminates the agreement without cause.

Example:

Restrictive Covenant and Non-Solicitation

8.1 Restrictive Covenant. Physician agrees that, with the exception of the services and duties that are performed on behalf of Hospital pursuant to the terms of this Agreement, during the Term and for a period of two (2) years after the termination of this Agreement for any reason, physician shall not, directly or indirectly within a 50-mile radius:

a. Have a financial or ownership interest in any hospital, clinic or other health system that competes with Hospital or any Hospital affiliate, including but not limited to as a partner, member shareholder, director, officer, principal, agent, investor or in any other relation or capacity whatsoever. Additionally, Physician may not perform services as an employee, individual, partner, member, shareholder, director, officer, principal, agent, investor, or in any other capacity whatsoever, for any hospital, clinic, or other health system

8.2 No Running of Covenant During Breach. With respect to any restrictive covenant which applies after the termination of this Agreement, if Physician violates such restrict covenant and Hospital brings legal

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action for injunctive or other relief, Hospital shall not, as a result of the time involved in obtaining the relief, be deprived of the benefit of the full period of such restrictive covenant. Accordingly, after the termination of this Agreement for any reason, for any time period that Physician is in violation of the restrictive covenants set forth in this Paragraph, such time period shall not be included in calculating any such restrictive covenant time period described in this Paragraph.

8.3 Injunction. Physician acknowledges that the restrictions contained in this Paragraph are a reasonable and necessary protection of the legitimate business interests of Hospital. In the event of any violation of these restrictions, Hospital shall be entitled to preliminary and permanent injunctive relief, in addition to any other remedy to which it may be entitled, including Hospital reasonable attorneys' fees and costs. Nothing herein contained shall be construed as prohibiting Hospital from pursuing any other legal or equitable remedies available to Hospital due to a violation of the restrictions set forth in this Paragraph.

Many hospitals only require physicians to agree to a non-solicitation provision. This allows the physician to practice in the same geographic area after leaving the hospital but prohibits the physician from asking patients to transfer from the hospital clinic to the physician's new practice location.

Example:

Non-Solicitation

8.4 Physician acknowledges and agrees that Hospital would suffer serious competitive and economic injury if Physician were to engage in any business activities in competition with Hospital. Accordingly, as a material inducement for Hospital to enter into this Agreement in consideration of the compensation payable hereunder, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Physician covenants and agrees that during the Term of this Agreement and for a period of twenty four (24) months after the expiration or sooner termination of this Agreement for any reason, Physician agrees that Physician shall not:

(a) Alone, or on behalf of any person, institution or organization, solicit, influence or attempt to influence any of the Patients which Physician serviced at any time during the Term of this Agreement to transfer their patronage from Hospital to any other person, institution or organization affiliated with Physician.

(b) Alone, or on behalf of any person, institution or organization, solicit, influence or attempt to influence any of Hospital's employees or independent contractors to alter or terminate their employment or independent contractor relationship with Hospital.

8.5 Physician acknowledges and agrees that the restrictions contained in this Article are reasonable in terms of scope, geography and duration. The parties therefore agree that in the event Physician

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breaches or threatens to breach this Article that Hospital shall be entitled, in addition to any and all other remedies and damages available, and without proof of monetary or immediate damage, to a temporary and/or permanent injunction, without bond, or, if bond is required, it may be posted without surety thereon, to restrain the violation or threatened violation by Physician of any of this Article plus attorney's fees and courts costs incurred by Hospital in connection therewith.

8.6 If the scope of any restrictions of this Agreement is too broad to permit enforcement of such restrictions to their full extent, then such restrictions shall be enforced to the maximum extent permitted by law, and Physician hereby consents and agrees that such scope may be modified accordingly in any proceeding brought to enforce such restrictions.

8.7 The provisions of this Article shall survive the termination of this Agreement.

9. Miscellaneous Provisions

The end of the contract will usually include several short miscellaneous provisions. These provisions usually cover the following topics:

- A confidentiality provision which requires the physician to maintain the confidentiality of and agree not to disclose or use for his or her own benefit, any confidential or trade secret information from the hospital.
- Whether one or both parties are required to pay for the attorneys' fees of the other party in the event the party must take legal action to enforce the agreement. If this provision is in the agreement, the physician should make sure that this provision applies to both parties and not just the hospital.
- Indemnification. This requires one party (P1) to reimburse all costs incurred by the other party (P2) which were caused by the acts of P1. The concept is that each party should be liable for its own acts, and not for the acts of others. It is common for indemnification to also require one party to reimburse the other party for costs to defend claims, including attorneys' fees. As an example, if the physician provides information to the hospital billing personnel to indicate that the physician performed a higher level evaluation and management code than what was actually performed, and the government sues the physician and hospital to recover the money plus sanctions, an indemnification provision, depending on the language, could require the physician to pay the group all costs associated with the hospital's defense of the lawsuit and any money penalties imposed by the government against the hospital. In reviewing the indemnification provisions, the physician should ensure that the hospital agrees to the same indemnification language that the hospital is requesting from the physician.
- The agreement may specify how the parties are to resolve disputes. It may require nonbinding procedures, such as mediation, or it may require arbitration, which is binding and eliminates the ability for either party to go to court to resolve disputes.
- The agreement will likely specify that the hospital owns the patient records and that the physician will not have any ownership or right of control over the records either during or after employment. The physician can request that the agreement allow the physician to have access to records after termination of employment for legitimate business purposes and other reasons such as responding to investigations and defending malpractice claims.

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- The agreement will also address how the parties can amend the agreement, which is usually only in writing and signed by the parties.
- Other common provisions include how the parties are to provide notice to each other regarding the agreement, whether either or both parties can transfer or assign the responsibilities under the agreement to other parties, and which court will have jurisdiction over any disputes arising from the agreement. It is also common for the agreement to state that if a party decides not to enforce a breach of the agreement, such a decision does not waive or prevent the party from having the ability to enforce any subsequent breach.

Example:

Confidentiality and Trade Secrets

9.1(A) **Proprietary Information.** In the course of Physician providing Services hereunder, Physician will acquire valuable proprietary data and other confidential information with respect to Hospital's activities. Such proprietary data and other confidential information include, but are not limited to, the following: Hospital's business and financial methods and practices, pricing and marketing techniques, file or database materials, computer programs, lists of Hospital's Patients, Patient record cards, Patient files, and data on Hospital's vendors. In addition, Physician, on behalf of Hospital, may develop personal acquaintances with patients and prospective patients of Hospital. As a consequence, the parties acknowledge that Physician will occupy a position of trust and confidence with respect to Hospital's affairs and services. In view of this position and the remuneration to be paid to Physician, Physician acknowledges that it is reasonable and necessary for the protection, goodwill and business of Hospital, that Physician agrees to those terms contained in this Article regarding the conduct of Physician during and subsequent to Physician's rendering of Services to Hospital, and that Hospital will suffer irreparable injury if Physician engages in the conduct prohibited thereby. Physician represents that observance of these terms set forth in Article will not cause Physician any undue hardship or unreasonably interfere with Physician's ability to earn a livelihood.

9.1(B) **Restriction on Unauthorized Disclosure.** Physician, during the Term of this Agreement and thereafter, will not, without the express written consent of Hospital, directly or indirectly communicate or divulge, or use for his/her own benefit or the benefit of any other person, firm, association or corporation, any of Hospital's proprietary data or other confidential information that has not otherwise been disclosed to the public, including by way of illustration, the information described in Section 9.1(A), which were communicated to or otherwise learned by Physician in the course of the employment relationship covered by this Agreement. Physician may, however, disclose such matters to the extent that disclosure is required: (a) in the course of the employment relationship with Hospital; or (b) by a court or governmental agency of competent jurisdiction. As long as such matters remain proprietary data or other confidential information, Physician will not use such proprietary data or other confidential information, in any way or in any capacity other than as a physician employed by Hospital and to further Hospital's interests.

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Example:

9.2 Attorneys' Fees. In the event it becomes necessary for any party to employ legal counsel or to bring an action at law or other proceedings to enforce any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees from the non-prevailing party.

Example:

9.3 Indemnification. Physician agrees to indemnify and hold harmless Hospital and its members, directors, officers, employees and authorized agents from any damages, losses, liabilities, claims, actions, demands, judgments, fines, fees, costs and expenses for actions of Physician that occurred prior to the Effective Date of this Agreement or that arise during the Term of this Agreement by reason of personal injury or property damages of whatever nature or are caused as a result of the negligent or intentional acts or omissions of Physician.

Example:

9.4 Dispute Resolution Procedures. Physician agrees that prior to initiating litigation of any type against Hospital (or any of its officers, directors, agents, or employees) in a court of law, Employee shall comply with the following:

- (a) **Notice.** Physician shall send Hospital written notice setting forth in reasonable detail the nature of the dispute or claim.
 - (b) **Mediation.** Following notice, Physician shall engage in a good faith attempt to mediate the claim before a neutral attorney mediator who has met qualifying training criteria for mediation from time to time established by the [applicable state] court.
 - (c) **Arbitration.** Following mediation, at the option of Hospital, any dispute arising out of or relating to this Agreement may be settled by arbitration by an individual arbitrator mutually acceptable by both parties.
 - (d) **Litigation.** Following all such procedures, in the event that any remaining, outstanding claims of any type against Hospital (or any of its officers, directors, agents, or physicians), then all such claims shall be tried in any court, if at all, without a jury, notwithstanding any rights to a jury trial. Physician hereby expressly waives any rights to a jury trial.
-

Example:

9.5 Health Records. The ownership and right of control of all reports, records and supporting documents that may be prepared in connection with the Services contemplated herein shall vest exclusively in Hospital; provided, however, that Physician shall have such right of access to such reports, records and supporting documentation as necessary for the provision of Services hereunder.

Example:

9.6 Amendments. This Agreement may be amended only by an instrument in writing signed by the parties hereto.

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Example:

9.7 Notices. Notices or communications herein required or permitted shall be given to the respective parties or by registered or certified mail (said notice being deemed given as of the date of mailing) or by hand delivery at the following addresses unless such party shall otherwise designate its new address by written notice:

Physician	Hospital
[Address]	[Address]

Example:

9.8 Assignment. Neither this Agreement nor any rights or obligations hereunder shall be assigned by either party without the prior written consent of the other party, except for an assignment by Hospital to an entity controlled by or under common control with Hospital.

Example:

9.9 Governing Law. This Agreement shall be construed and governed by the laws of the State of [INSERT STATE].

Example:

9.10 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, nor be construed to be, a waiver of any subsequent breach hereof.

*ACFAS acknowledges the work of Stacy L. Cook, Esq. in contributing to this Guide.
Ms. Cook practices with the law firm of Barnes & Thornburg, LLP.*

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